

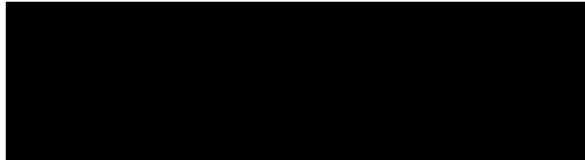


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: Nebraska Service Center Date:

NOV 8 2000

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:



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identifying data related to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a firm which researches and develops thin-film amorphous devices. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a research scientist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel argues that the beneficiary is recognized internationally as outstanding in his field.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

(A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

(C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

(F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field;

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on June 22, 1998, to classify the beneficiary as an outstanding researcher in the field of advanced thermoelectric materials, technologies, and devices. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of June 22, 1998, and that the beneficiary's work has been recognized internationally within the field as outstanding.

The petitioner claims that the beneficiary has met the following criteria:

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

Counsel observes that the beneficiary received, in [REDACTED], the third prize award for the project: *The Theoretical Study of Amorphous Formability of Alloys*. This award was issued by the Ministry of the Machinery and Electronic Industry of the People's Republic of China. Counsel also noted that the beneficiary received, in [REDACTED], the third prize award for the project: *Fundamental Investigation of Cu-P Based Amorphous Brazing Alloys*. Again, this award was issued by the Ministry of the Machinery and Electronic Industry of the People's Republic of China. The record does not show that these awards are ones which are recognized internationally nor does it show the criteria required to qualify for the awards. The petitioner has not shown that these are major awards.

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

Counsel claimed that the beneficiary is a member of the American Society of Materials and the Materials, Metals, and Minerals Society. The record contains no evidence to establish the membership requirements of these associations. An alien cannot satisfy this criterion simply by providing copies of statements of dues for membership. Furthermore, the petitioner's personal assurance that the organizations require outstanding achievement of their members does not constitute evidence of the organizations' membership requirements. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

Counsel asserts that the beneficiary's work has been discussed in works published by others in the academic field.

Footnoted citations, or brief mentions in articles, do not indicate that the articles are about the alien's work. The purpose of this criterion is to show that the beneficiary's work has attracted such notice in the international research community that some researchers have subjected the beneficiary's work to in-depth analysis, criticism and discussion. While footnoted citations have value in showing that other researchers have referred to the

beneficiary's work, those citations do not elevate the beneficiary above the countless other published researchers whose work is cited in thousands of scholarly journals each year.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

Because the purpose of these regulatory criteria is to establish that the beneficiary enjoys an international reputation as an outstanding researcher, the evidence submitted to fulfill the criteria must, to some extent, demonstrate such a reputation.

Counsel lists the beneficiary's "lectures and participation in conferences," but does not establish that presentations at professional gatherings reflect, or cause, international recognition. Documentation from these conferences indicate that very substantial numbers of researchers offer presentations.

Several witness letters accompany the petition. Dr. [REDACTED] Director, [REDACTED]

[REDACTED] states:

. . . . In the past two and half years, Dr. [REDACTED] has conducted research on the project of thin film thermoelectric devices funded by U.S. Army SBIR program. His expertise in the thermoelectric materials and bulk materials processing plays a very significant role in this project. He established a vacuum thin films deposition process of flash evaporation for chalcogenide alloys. This technique has demonstrated to have excellent repeatability of controlling the chemical composition and the microstructure of the chalcogenide films. Dr. [REDACTED] is also an ambitious scientist, who is capable of generating brilliant, and innovative ideas for the future research of thermoelectric and other advanced materials. . . . Recently, Dr. [REDACTED] has creatively converted a physical vapor deposition (PVD) system into a gas condensation system that can produce materials having nano-phase microstructure. This apparatus has potential applications for the defense agency and the commercial entities. I believe that Dr. [REDACTED] continuing research in [REDACTED] will be important for the development of advanced thermoelectric materials and devices.

[REDACTED] Project Manager - Thermal Conversion Materials, Metallurgy, and Ceramics Division, [REDACTED] asserts:

. . . . While at the [REDACTED] he performed an impressive analysis of the microstructure of advanced alloys that we prepared here at [REDACTED] under a contract with the Department of Energy which resulted in several publications.

Recently, I have been involved with Dr. [REDACTED] in preparing a joint research proposal between [REDACTED] and the company he is employed with, [REDACTED] of [REDACTED]

[REDACTED] He is a major contributor to this effort and has provided our team with some exciting new ideas. His participation will be a key factor in the successful awarding of this contract.

[REDACTED] Professor and Chairman,
[REDACTED] states:

. . . . As additional demonstration that he has extraordinary ability in science, I can cite several external recognitions of his work. The [REDACTED] newsletter of the International Thermoelectric Society, [REDACTED] cites the work of Dr. [REDACTED] as "promising." In addition, a paper by [REDACTED] and [REDACTED] of [REDACTED] laboratory, cites the work of Dr. [REDACTED]. These researchers at the national laboratory have shown interest in collaborating with Dr. [REDACTED] by sending samples and exchanging early data. Such interest in his work shows that it has importance and benefit to research of national interest.

Most of the initial witnesses have employed, instructed, or collaborated with the beneficiary, and, therefore, their statements are not evidence that the beneficiary has earned a broad reputation.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

Counsel asserts that the "results of Dr. [REDACTED] research have been published in numerous articles in leading international journals, including *Philosophical Magazine B* and as *Letter to Editor*, IOP Publishing, Ltd. The initial submission contained little evidence about these journals.

The director denied the petition, having determined that the petitioner has not established that the beneficiary is internationally recognized. The director observed various shortcomings or omissions in the petitioner's initial submission.

On appeal, counsel states:

Upon review of the INS Decision, the response to evidence submitted for subparagraphs (A) Major Prizes. . . (C) Published Material. . . (F) Scholarly Books . . . indicates that the INS required that the alien's work be internationally outstanding or internationally recognized.

The requirements for Outstanding Researcher category does not require that the alien's work be internationally recognized.

Two (2) factors support this: First, the regulations do not require or mention international, and: Second, the requirements for classification as an alien of extraordinary benefits pursuant to Sec. 203(b)(1)(A) do require international acclaim. (See 8 CFR 204.5(h)(3) the evidence requirement that notes national or international.)

Based upon the argument above, it appears the Service has applied the wrong standard in evaluation of [REDACTED] petition. Upon review, it is believed that the alien's qualifications are more than ample.

Counsel is mistaken. 8 CFR 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. . . .

Counsel also states:

Attached hereto is a copy of Dr. [REDACTED] original dissertation from the [REDACTED] titled "Microstructure and Property Analysis of Thermoelectric SiGe and TiNiSn Alloys." Research from Dr. [REDACTED] dissertation appeared in an published article by Dr. [REDACTED] titled "Microstructure of Thermoelectric SiGe Alloys Containing Fullerite," . . .

. . . Dr. [REDACTED] original research work performed in the [REDACTED] was indeed recognized internationally. His experimental results and theoretical calculation of SiGe and TiNiSn alloys in this period was published in his dissertation and two articles. . . .

A fraction of content from the dissertation was summarized in the article [REDACTED] and [REDACTED] and was presented in [REDACTED] and [REDACTED] International Conference on Thermoelectrics and published in both conference proceedings. These published results have been cited by [REDACTED] and his colleagues of [REDACTED] and also were recognized as "promising" by the International Thermoelectric Society.

Dr. [REDACTED] conducted this research under the supervision of Professor [REDACTED] in the [REDACTED] His participation in the above mentioned internationally recognized research can be verified by the chapter V and chapter VI of this dissertation. Therefore, it should not be doubted that Dr. [REDACTED] was one of the producers of the above mentioned research work. Furthermore, Professor [REDACTED] letter in 1997 certifies clearly Dr. [REDACTED] participation and contributions.

Since this international recognition has been generated by Dr. [REDACTED] publications, it is not the case that the submitted documents "do not establish that the beneficiary's work is known and considered unique outside his immediate circle of colleagues," as stated in the decision letter for the case LIN9818551619.

Virtually all scholarly writings contain a significant number of bibliographic footnotes, including the beneficiary's own writings. To hold that every cited author has an international reputation as outstanding is unacceptably broad. A researcher whose work has been the primary subject of scholarly articles plainly enjoys more recognition than a researcher who happened to write on the same subject as a later author, who cited the earlier researcher's work in a footnote.

In addition, it does not automatically follow that the beneficiary is internationally recognized as outstanding in his field; dozens of researchers make presentations at each of hundreds, if not thousands, of international gatherings each year, and countless articles appear in professional journals. It is unrealistic to claim that every piece of research which reaches an audience in more than one country is, by definition, outstanding. The petitioner has not shown that, outside of those entities where he has worked, the beneficiary's work is in any way distinguished from that of others in the same or related fields. It cannot suffice to claim that the beneficiary enjoys a vicarious reputation stemming from the acclaim of his employer or collaborators.

The only new evidence submitted on appeal is a copy of the beneficiary's dissertation. While some major contributions will, of course, be revealed in the form of scholarly articles, the very act of publishing one's research does not constitute a scholarly contribution of major significance. The petitioner must show that his published work has had unusual influence if such work is to qualify as a major contribution. The publication of a dissertation does not necessarily secure an individual international recognition.

Counsel states that Professor [REDACTED] at the [REDACTED] has attested to the implications of the beneficiary's research. The opinions of the professor, however grounded in expertise, have not been shown to represent a consensus among that vast majority of research scientists who have not employed or taught the beneficiary. Whatever the reputations of the beneficiary's past and present supervisors, professors, and collaborators, the statements of these folk cannot establish that the beneficiary has earned an international reputation which is not dependent on personal acquaintance with him.

The record shows that the petitioner, the beneficiary's professors, and the beneficiary's collaborators think highly of the beneficiary's work, and that the beneficiary's efforts have attracted some degree of notice on a wider scale. The record stops short, however, of demonstrating a consistent pattern to show that the beneficiary's work is recognized internationally as outstanding. Assertions about the value or potential applications of the beneficiary's research do not establish or imply international recognition.

On appeal, counsel has failed to provide adequate documentation to establish that the beneficiary has been recognized internationally as outstanding in the field of thermoelectrics. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.